

REMARKS**I. Summary of Telephone Conference with Examiner Katcheves**

Applicants' representative, Monica De La Paz, telephoned Examiner Katcheves on April 14, 2005, to request clarification about the rationale for issuance of the Notice of Non-Responsive Amendment dated March 22, 2005, and to inquire about possible options for response to the Notice of Non-Responsive Amendment. Applicants were informed by Examiner Katcheves that the Notice of Non-Responsive Amendment was issued because the Examiner believes that the Amendment amounts to an impermissible shift in invention in accordance with 37 C.F.R. §1.111, and that a serious search burden would be presented to the Examiner to examine the claims. Applicants were informed that options for response include: (1) responding with argumentation that the claims as amended do not result in a shift in invention such that a serious search burden would result; (2) further amending the claims; or (3) submitting a petition to the Director in accordance with 37 C.F.R. §1.127 for refusal to admit the amendment. Applicants were informed that if they choose to respond with argumentation in accordance with option 1, that the Examiner may respond by issuing a Restriction Requirement. Applicants were informed that this Notice of Non-Responsive Amendment was issued in order to give Applicants the option of amending the claims in order to avoid a Restriction Requirement.

II. Response to Notice of Non-Responsive Amendment

Applicants respectfully traverse the issuance of this Notice of Non-Responsive Amendment, and herein submit this response in accordance with 37 C.F.R. §1.111(b).

Applicants disagree that the Amendment to claims 16 and 18-25 and the newly submitted claims 38-65 and 78-85 amounts to an impermissible shift in invention. Prior to amendment,

claim 16 was drawn to a method of assaying for the expression of a fusion protein comprising transferring a gene into a cell with an expression vector according to claim 10. Claim 10 pertained to an isolated nucleic acid encoding a polypeptide comprising a reporter amino acid sequence, a polypeptide fused to the reporter amino acid sequence, and a leader sequence.

The Amendment that is the subject of this Notice of Non-Responsive Amendment was submitted in an effort to narrow the claims at issue in an effort to facilitate and expedite their prosecution. Amended independent claim 16 pertains to methods of detecting cellular expression of a recombinant seven transmembrane G-protein associated receptor in a subject. New independent claim 55 pertains to methods of detecting a recombinant seven transmembrane G-protein associated receptor in a cell. Both of these independent claims, and thus all dependent claims, are narrower than methods of assaying for the expression of a protein comprising a reporter amino acid sequence. More particularly, recombinant seven transmembrane G-protein associated receptor sequences are a type of reporter sequence disclosed in Applicants' specification that are subgeneric to the broader genus of reporter amino acid sequences. Therefore, since the amended claims would have narrowed the claims at issue, there is no impermissible shift in invention. Furthermore, no additional search burden would have resulted, since search of the genus would have covered the subgenus.

Applicants therefore respectfully request that the Amendment submitted on December 20, 2004, be entered, and this Notice of Non-Responsive Amendment be withdrawn.

The Examiner is invited to contact the undersigned attorney at (512) 536-5639 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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